

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 63 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH and  
MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
STATE OF GUJ.

Versus

CHAUDHARY TARACHAND SHIVCHAND

-----  
Appearance:

MR VM PANCHOLI, LD APP for Petitioner  
MR KG SHETH for Respondent No. 1

-----  
CORAM : MR.JUSTICE M.S.PARIKH and  
MR.JUSTICE H.K.RATHOD  
Date of decision: 19/11/1999

ORAL JUDGEMENT [ Per M.S. Parikh, J.]

1. This acquittal appeal has been directed against  
the impugned judgment and order dated 24/9/1986 rendered  
by the Learned Special Judge, Mehsana in Special Case No.  
3 of 1985. The respondent, hereinafter referred to as  
'the accused', was performing his duties as the Unarmed

Police Constable in Bahucharaji Police Station on or around 22/9/1984 and in consideration of sending/moving the police papers quickly to the Court he demanded Rs.1,000/- by way of illegal gratification. Ultimately it was decided to take that amount by instalments. On the next day i.e. on 23/9/1984 the accused accepted Rs.400/out of the said amount. Thereafter, on 26/4/1984 he accepted Rs.300/- by way of illegal gratification being the part payment as aforesaid. Acceptance of the amount by the accused was for his personal benefit and by way of misuse of his position as a public servant. He was, therefore, charged with the offence punishable u/S 5(2) of the Prevention of Corruption Act, 1947 (for short 'PC Act') and section 161 of the Indian Penal Code (for short 'IPC').

2. It has been the prosecution case that on 18/9/1984 complainant Kalaji's elder brother Talaji's son Bhupatji was caught committing theft of grass from the field of Kanjibhai and he was taken to the village platform. A complaint was also filed against him by Kanajibhai. On the next day, i.e. on 19/9/1984 quarrel and resultant exchange of hands ensued between the complainant party and Kanajibhai. Kanajibhai also filed complaint with regard to this incident in the police station. For inquiring into the complaint accused Tarachand went to the village and arrested Kalaji, Bhupatji, Dosaji and Visaji. He had taken them to Bahucharaji Police Station. They were not released on bail at that point of time. Hence a bail application was filed before the learned Judicial Magistrate First Class at Chanasma Some advocate was also engaged for that proceeding. That bail application was for hearing on 26/9/1984. The complainant Kanajibhai wanted to have his brother released on bail. He, therefore, saw one Amratbhai Khengar, who was known to accused also. Amratbhai demanded Rs.1,000/- from the complainant Kalaji, but since complainant did not have that amount at that point of time and he had only Rs.400/- with him, he gave that amount (Rs.400/-) to Amratbhai and told him to give balance amount by instalments. The amount was to be given to the accused Tarachand. Yet the complainant's brother was not released on bail at Bahucharaji Police Station The complainant, therefore, got enraged and went to the office of the Anti-Corruption Bureau at Mehsana. He was accompanied with aforesaid Amratbhai. A.C.B. Inspector recorded the complaint of Kalaji. According to the said complaint the talk with regard to payment of Rs.1,000/- ensued between Amratbhai Khengar on the one side and the accused on the other side on 22/9/1984. Amratbhai informed complainant about this talk and since

he did not have the amount of Rs.1,000/- with him he asked Amratbhai to wait for the next day.. On the next day i.e. on 23/9/1984 the complainant had taken Rs.400/- and went to Bahucharaji Police Station in the company of Amratbhai. There he gave Rs.400/- to Amratbhai. It was at around 9.00 O'clock in the morning when Amratbhai is stated to have paid over said amount of Rs.400/- to the accused Tarachand in the compound located on the rear side of the police station. Amratbhai thereafter informed complainant that he had paid over Rs.400/- to the accused Tarachand and the balance amount of Rs.300/- was to be paid on 26/9/1984. That amount was to be paid by 11.00 a.m. at Bahucharaji S.T. Stand or at the Bahucharaji Police Station. He was also informed to pay that amount of Rs.300/- in presence of Amratbhai. In case the accused was not available at the S.T. Stand or the police station, the amount was to be paid over at the house of the accused. Since the complainant was not desirous of making payment of Rs.300/-, he wanted to file the complaint.

Upon filing of the said complaint, P.I. Mr. Parmar called Panch witnesses to whom the complainant was introduced and the facts of the complaint were narrated to them. Upon being asked, the complainant produced three notes of the denomination of Rs.100/- each, the particulars whereof were noted in the Panchnama. Mr. Parmar then asked Nathusing to perform experiment of ultra violet lamp and anthracene powder for apprising the complainant and the Panch witnesses about the same. The experiment was so performed by Nathusing by bringing out a small box containing anthracene powder, a piece of paper and a piece of cloth. The notes were first shown in the absence of the light of ultra violet lamp. No signs or light could be noticed on the notes. The notes were also shown in the light of ultra violet lamp. Then also no signs or marks could be noticed on the notes. Thereafter, anthracene powder was applied to the notes, but nothing could be noticed upon seeing them in the absence of light of ultra violet lamp. However, upon showing the notes in the light of ultra violet lamp, the notes displayed light blue/white shining marks. The notes were then folded and placed into the pocket of the complainant with the instruction that so long as the accused did not demand the money the complainant should not touch the notes. Panch witness no.1 was instructed to remain with the complainant and observe and hear what happens and what is spoken. The complainant was also instructed to give signal of touching his head with his right hand when the accused would accept the money. First part of the Panchnama was accordingly recorded at the

A.C.B. office. The Panch witnesses signed in token of that part of the Panchnama having been recorded in their presence. Thereafter, the Panch witnesses, complainant and the members of the raiding party accompanied Inspector Mr. Parmar for going to Bahucharaji in a Government jeep. The jeep was stopped near the railway crossing and the complainant and the Panch witness no. 1 were instructed to go ahead. Panch witness no. 1 Virambhai and the complainant accordingly proceeded ahead and went to Bahucharaji Police station, but accused Tarachand was not found there. Upon making inquiry the complainant and Panch witness no. 1 Virambhai were informed that accused had proceeded for attending the Court at Chanasma. They, therefore, went to the S.T. Bus Stand and on their way they saw ACB Inspector Mr. Parmar, who instructed them to inquire at the S.T. Bus Stand and then to see him. The complainant and Panch witness no.1 Virambhai went to the S.T. Bus Stand where they were informed by one Rupaji running a Pan cabin there, that accused Tarachand had summoned them at Chanasma. Thereafter they went to Chanasma in the jeep. The jeep was stopped near the rest house at Chanasma. All the members of the raiding party including the complainant and the Panch witnesses had got down from the jeep. As per the instructions from Mr. Parmar, Panch witness no. 1 Virambhai, complainant and witness Amratbhai walked down the distance for going to the Court. They saw the accused in the compound of the Court where the accused asked what did they do about him and the complainant replied that he had brought the money. He thereafter took out the aforesaid three notes of the denomination of Rs.100/- each from his pocket and gave the same to the accused, who counted with both his hands and held them in his palm. Thereupon the complainant gave the prearranged signal. Upon seeing the signal the members of the raiding party approached running down to the place of the incident and seeing them rushing there the accused threw away the notes on the road. He tried to escape, but Amratbhai and others caught hold him and took him to Chanasma Police Station, where the experiment of ultra violet lamp was once again performed and it was noticed that the thumbs, fingers and palms of both the hands of the accused revealed marks of anthracene powder when shown in the light of the ultra violet lamp. The remaining part of the Panchnama was accordingly completed there. Statements of the witnesses were recorded and after obtaining required sanction for prosecuting the accused, charge-sheet was filed against him.

3. The accused pleaded not guilty to the charge and asserted that he was falsely implicated out of the

enmity/animosity, the complainant party as also Amratbhai and P.I. Mr. Parmar harbored against him. The accused did not have any authority or power to release complainant's brother on bail and no one was enlarged on bail at the police station. The Ld. Judicial Magistrate had already passed the order enlarging the brother of the complainant on bail and, therefore, there was no question of demanding or accepting illegal gratification in respect of that case. The accused was also concerned with the investigation of a case of theft against Amratbhai and, therefore, he also tried to falsely implicate the accused. P.I. Mr. Parmar was also interested on account of the fact that on 11/8/1984 there were two private jeeps over-crowded and, therefore, the accused had an occasion to interrogate the drivers of the said jeeps by asking them why so many persons were made to sit in the jeeps and the accused was informed that Mr. Parmar was waiting in the rest house and he should see him. Upon being informed about the incident by Mr. Raval, the accused was summoned at the rest house where Mr. Parmar scolded the accused asking him why he was threatening his drivers and that he (Mr. Parmar) would see him (accused).

4. The prosecution examined complainant Kanaji Thakor at exh. 14, Amratbhai Khengar who turned hostile, at exh. 16, Panch witness no. 1 Virambhai at exh. 18 and P.I. Mr. Takhatsinh Parmar at exh. 20. The complaint was placed on record at exh. 15 and the Panchnama was received in evidence at exh. 19. At exh. 21 sanction order was produced and at exh. 22 extracts from the record of Gujarat Electricity Board for showing that at the relevant point of time there was failure of electricity in the area where Chanasma Police Station was situated and where accused was alleged to have been taken for the performance of experiment of ultra violet lamp. At the conclusion of the trial the Ld. Special Judge, upon appreciation of the evidence, came to the conclusion that main witness Amratbhai having turned hostile the story with regard to demand of illegal gratification could not be established by the prosecution. The Ld. Special Judge, therefore, proceeded to appreciate the evidence from the stand point of the story as stated by the complainant. Upon appreciation of the evidence he came to the conclusion that there were material contradictions in the evidence of all the witnesses as also there were material inter-se contradictions in the oral testimony of the witnesses. He, therefore, came to the conclusion that the prosecution story both with regard to demand as well as acceptance of illegal gratification could not be established against the

accused beyond reasonable doubt. Dealing with the evidence of complainant Kalaji Thakor, the Ld. Special Judge has observed that the head constable of Bahucharaji Police Station Mr. Visaji in the company of the accused Tarachand had gone to inquire into the complaint given by Kanajibhai against relatives of the complainant Kalaji Thakor. It would thus appear that the accused was not in charge of the inquiry as alleged by the complainant. It was Visaji, head constable who was in charge of the inquiry/investigation. The complainant was enraged as the police persons of Bahucharaji Police Station did not release his brother at the police station itself since he had already paid Rs.400/- for that purpose and he felt that he wasted that amount. According to his version when he gave Rs.300/- to the accused, the accused threw away the notes on to the ground saying that they were tainted with powder. Assessing the evidence of the complainant the Ld. Special Judge has observed that the story of demand of illegal gratification could not be established by the prosecution from the evidence of the complainant, that he was not party to any conversation with regard to demand of illegal gratification. It was only Amratbhai who was stated to be the party to such alleged talk/conversation and Amratbhai did not support the prosecution. It has been observed that it was highly improbable that for the purpose of swift/quick movement of the papers to the Court, there could ever be any demand of the amount of Rs.1,000/- and that even if such a demand was made, hardly any one would agree to honour such demand. It would be obvious that as soon as the Court would order for production of the papers, police would have to produce them before the Court. The Ld. Special Judge, referring to the cross-examination of the complainant, observed that since the police did not release the relative of the complainant, bail application was required to be filed before the Court and some advocate was also required to be engaged for that purpose. The complainant admitted that there was a talk with the head constable for releasing Talaji on bail. He admitted that Amratbhai told him that for the purpose of getting his relatives released on bail he would have to incur cost of Rs.1,000/- and, therefore, he had paid Rs.400/- to Amratbhai. He then admitted that he paid Rs.400/- for handing over the said amount to the police person and that Amratbhai informed him that he had in turn paid over Rs.400/- to the police person. He, therefore, asked Amratbhai why his relative/s was/were not released on bail by the police although payment was made as aforesaid. The complainant, therefore, suspected Amratbhai and upon having asked Amratbhai about the same Amratbhai said that upon making payment of remaining

amount of Rs.600/- police would enlarge his brother on bail. He also admitted that one advocate Udesing Thakor by name presented bail application for getting release of his brother on bail and hearing thereof was fixed on 26/9/1984. He admitted that payment was made to the said advocate, but he did not know what amount was paid to him. He asked Amratbhai that he would like to accompany complainant at Mehsana for filing complaint against police persons and, therefore, Amratbhai accompanied him. Assessing this part of the evidence of the complainant, the Ld. Special Judge has observed that Amratbhai would be the only witness, who could or could not say about what transpired between Amratbhai and accused and police persons in the matter of enlarging the brother/s of the complainant Kalaji on bail. Upon appreciation of the facts which preceded the trap incident as also the filing of the complaint with regard to laying trap, the Ld. Special Judge has observed that it was improbable that police would demand bribe from the complainant. Ld. Special Judge has also observed that possibility of Amratbhai pocketing the money cannot be ruled out. Besides, advocate Mr. Udesing Thakor was engaged for the bail application presented before the Court. Bearing in mind all these facts, it has been observed that when the Court enlarged the complainant's brother on bail, there was hardly any need to pay money to the accused or there was hardly any possibility of the accused demanding money from the complainant. At the time of the incident of trap Amratbhai introduced complainant to the accused Tarachand as complainant did not personally know accused Tarachand. It was suggested in the cross-examination of the complainant that Amratbhai did not instruct complainant to pay the money to the accused, that Visaji asked complainant why he had approached Mr. Parmar for entrapping them and that Amratbhai caught accused Tarachand by his neck and accused Tarachand who held his hand bag had wielded the same resulting into the notes falling down on to the ground. The complainant denied this suggestion. However, the Ld. Special Judge has come to the conclusion that it was undoubtedly shown from the prosecution story that the notes were lying on to the ground and that the story with regard to accused having accepted the notes and thrown away on to the ground was not established beyond reasonable doubt. Besides, the accused had with him his hand bag and the witness admitted that he saw that hand bag in the police station, but the notes in question were not found from the hand bag. He also admitted that there was failure of electricity when the accused was taken to Chanasma Police Station. The Ld. Special Judge has, therefore, observed that the accused might have had smelt about a possible

trap or might have had accepted the notes and placed them in the hand bag, if in fact there was any prior talk with regard to illegal gratification in question.

Dealing with the evidence of Panch witness no. 1 Virambhai, the Ld. Special Judge has observed that the story stated by this witness with regard to the alleged recovery of Rs.300/- is different from the story stated by the complainant inasmuch as the conversation spoken to by the complainant in his evidence is different from the conversation spoken to by this witness. The complainant testified that accused addressed him that the notes were stained with powder and upon so addressing the complainant he threw away the notes on to the road; whereas this witness has not spoken about such conversation and has testified that upon seeing members of the raiding party including A.C.B. Inspector Mr. Parmar the accused threw away the notes on to the road. The Ld. Special Judge has, therefore, observed that the explanation of the accused about he having refused to accept the notes and in the process the notes having fallen on to the road has become probable. The Ld. Special Judge has dealt with the evidence of this witness at length with regard to recording of his statement, with regard to the carrying of the hand bag by the accused and with regard to failure of electricity. The Ld. Special Judge has dealt with all the circumstances flowing from the facts so narrated by the witness. He has also dealt with the circumstances flowing from the grant of bail by the Court much before the occurrence of the trap incident.

5. Dealing with the evidence of Investigating Officer Mr. Parmar exh. 20 Ld. Special Judge has observed that when this witness was running towards the scene of offence upon complainant having given pre-arranged signal, he saw the accused throwing away notes on to the road. The evidence of the witness to the effect that because the accused saw him and members of the raiding party running to the place of incident, he threw away notes on to the road was found not acceptable.

Upon assessment of the evidence as a whole, the Ld. Special Judge has come to the conclusion that the prosecution has failed to establish the alleged guilt of the accused beyond reasonable doubt.

6. Mr. V.P. Pancholi, Ld. A.P.P. read the evidence as well as the impugned judgment and order of acquittal for the purpose of assailing the same before



us. He mainly relied upon the evidence of P.W. No. 3 Virambhai, who happened to be the first panch witness. According to his submission, he is an independent witness and there was no reason for the Ld. Special Judge to discard his evidence. He has, therefore, submitted that as per the version of Virambhai the accused accepted the tainted notes of the denomination of Rs.100/- each from the complainant at the time of trap and then upon seeing the members of the raiding party rushing to the place of incident, the accused threw away notes on to the road. He has also read the evidence of Takhatsinh Parmar, P.W. 4 exh. 20, Investigating Officer, for submitting before us that his evidence would lend support to the evidence of the Panch witness. In our considered opinion, the evidence of both these witness cannot be looked into and considered in isolation. The same also cannot be considered divorced from the facts and circumstances of the case flowing from the evidence read as a whole. Mr. Pancholi fairly submitted that the prosecution did not bring the bail application moved before the Ld. Magistrate on record for showing the date on which the bail application was moved. In our considered opinion that would have thrown light upon the prosecution story that preceded the trap incident. That apart, the complainant himself has not come out with a case that at any point of time there was any demand of illegal gratification directly from him. As a matter of fact, the prosecution story is based upon the alleged demand of illegal gratification made by the accused from and through Amratbhai, who turned hostile to the prosecution. Besides, it has been suggested in the evidence of the witnesses, more particularly Amratbhai, complainant and Investigating Officer that there was some or the other extraneous cause which might have precipitated in seeing that the accused was entrapped. We have noticed the suggestions with regard to such cause or causes from the evidence of the aforesaid witnesses, which have been dealt with at length by the Ld. Special Judge. It is true that if the circumstances warrant evidence of a solitary witness, more particularly a Panch witness to be accepted, even such evidence would suffice. There can be no dispute with regard to this proposition. However, such evidence has got to be evaluated in the light of the circumstances of the case. In the present case the very substratum of the prosecution case has failed. That is with regard to enlarging of the relations of the complainant on bail in the theft case or the other case. If Rs.1,000/- were agreed to be paid to the accused, what about the expenses and lawyer's fees regarding the bail application ? The prosecution has not thrown any light on this important part of the story which has surfaced

from the prosecution evidence. There are other salient features of the story which have also surfaced from the prosecution evidence and we have noted them in the narration part of this judgment while also dealing with the conclusion reached by the Ld. Special Judge and reasons given by him. We need not repeat the same. Besides, we have also noticed a circumstance with regard to the marks of anthracene powder alleged to have disclosed not only from the fingers or thumbs of both the hands of the accused, but also appeared from both the palms of the accused. We have not been able to reconcile with this circumstance while dealing with the prosecution story about counting of the notes which are only three in number by the accused while he was standing. Be that it may, having gone through the entire evidence as well as the findings and reasonings given by the Ld. Special Judge, we do not find any impropriety, illegality or failure of justice at the hands of the Ld. Special Judge.

7. Mr. Pancholi, Ld. A.P.P. for the State made reference to a Bench decision in the case of State v/s. Ghanshyamsinh R. Vaghela reported in 38-1 1997 (1) G.L.R. 751. There cannot be any dispute with regard to broad propositions set out in para. 7.1 to 7.5 of the citation. Decisions of the Apex Court in the case of Hazari Lal v. The State (Delhi Administration), AIR 1980 SC 873, State of U.P. v. Dr. G.K. Gosh, AIR 1984 SC 1453, State of Kerala v. K.M. Mathew & Ors., AIR 1978 SC 1571, Prakash Chand v. State (Delhi Admn.), AIR 1979 SC 400 and Nasirmiya Hasanmiya Mallik v. State of Gujarat, 1993 (1) G.L.R. 853 have been referred in the said paragraphs for the broad propositions which have been set out. Reliance to be placed on the evidence of one or the other witness including Panch witness or Investigating Officer would depend upon facts and circumstances of each case. In the present case apparently the trap has failed. However, the manner in which the trap has failed differs from witness to witness and under such circumstances it would be difficult to place reliance upon one or the other witness while discarding evidence of the rest of the witnesses. Mr. Pancholi also referred to a Bench decision in the case of Kishorchand Mansukhlal Joshi v. State of Gujarat reported in 1985 G.L.H. 103. That also deals with credibility of evidence of a Panch witness in a trap case; that is in the realm of appreciation of evidence depending upon facts and circumstances of each case. Reference has also been made to one more decision of this Court in the case of Karsanbhai Manchubhai v. State of Gujarat reported in 1992 Criminal Law Journal 3824. As a

matter of fact, the Bench has confirmed the conviction upon appreciation of the evidence. The Bench has also observed while referring to decision of the Hon'ble Supreme Court in the case of Hari Dev Sharma v. State reported in AIR 1976 SC 1489 that when there is an integrated story of paying the bribe by instalments the entire version should be established and if there is any infirmity for not believing the earlier part of the story, conviction cannot be recorded even though there might be sufficient evidence on the point of acceptance of bribe on the day of the trap. While distinguishing this proposition flowing from Hari Dev Sharma's case (supra) the Bench has further observed that in the case before the Bench there was sufficient evidence regarding earlier part of the prosecution story also. In the present case there is entirely a reverse trend in the prosecution evidence. Mr. Pancholi finally referred to a decision in the case of Jainarain v. State of U.P. reported in 1974 Criminal Law Journal 312. Mr. Pancholi read head-note (A) which would indicate that where in a prosecution u/S. 161 of the IPC read with section 5 (2) of the P.C. Act, the accused who was caught by a trap did not dispute the recovery of the initialled currency notes from his pocket and when the explanation offered by him was not believable on account of infirmities therein, the conviction based on the evidence of only a trap witness cannot be said to be illegal. In the present case the recovery itself is in dispute whereas the prosecution evidence on the vital part of the story is so shaky that it would be difficult to accept the prosecution version with regard to recovery in isolation. That apart, even before the Apex Court reference has been made to earlier decision in the case of Ram Prakash Arora v. State of Punjab reported in AIR 1973 SC 498, in which case the prosecution evidence consisted only of the witnesses who had participated in the trap and for one reason or the other, it was found that the evidence of four witnesses was not free from blemish and that the accused denied recovery. The Court there found that the evidence of the witnesses who participated in the trap should be tested in the same way as that of any other interested witnesses and in a proper case the Court may look for independent corroboration before convicting the accused person. We propose to refer to this decision for the simple reason that in the present case independent witnesses were obviously available to the prosecution since the trap incident is alleged to have occurred in the Court compound itself and in the earlier part of the day. In contrast, prosecution has adduced evidence of only the complainant and the trap witnesses which consisted of Panch witness no.1 and Investigating

Officer. The accused denied the recovery and the notes were recovered from the road/ground. Bearing in mind all these circumstances, we see no reason why we should overturn the acquittal rendered by the Ld. Special Judge.

In the result, we dismiss this appeal.  
PVR. \* \* \*